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March 2, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, D.C.

Re: ET Docket No. 98-206, RM-9147, RM-9245

Dear Ms. Salas:

Enclosed please find for filing on behalf of EchoStar Communications Corporation ("EchoStar") an original and eight copies of EchoStar's Comments in the above-referenced proceeding. Pursuant to the Commission's request, EchoStar submits these Comments in both hard copy and on computer disk.

Also enclosed is an additional copy of EchoStar's Comments, which we ask you to date stamp and return with our messenger.

Respectfully submitted,

Colleen Sechrest

Philip L. Malet
Colleen A. Sechrest

Enclosures

No. of Copies rec'd 218
List ABCDE

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WASHINGTON

PHOENIX

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Exhibit M

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FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of

Amendment of Parts 2 and 25 of the
Commission's Rules to Permit Operation
of NGSO FSS Systems Co-Frequency with
GSO and Terrestrial Systems in the Ku-
Band Frequency Range

and

Amendment of the Commission's Rules
to Authorize Subsidiary Terrestrial Use
of the 12.2-12.7 GHz Band by Direct
Broadcast Satellite Licensees and Their
Affiliates

ET Docket No. 98-206
RM-9147
RM-9245

COMMENTS OF ECHOSTAR COMMUNICATIONS CORPORATION

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Senior Vice President and General Counsel
EchoStar Communications Corporation
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Communications Corporation*

Dated: March 2, 1999

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FOR PUBLIC INSPECTION

SUMMARY

EchoStar Communications Corporation ("EchoStar") hereby submits its Comments on the above-captioned proposals (1) to permit non-geostationary satellite orbit ("NGSO") Fixed-Satellite Service ("FSS") operations in certain segments of the Ku-band, including the 11.7-12.7 GHz band, the 14.0-14.5 GHz bands, and the 17.3-17.8 GHz band; and (2) to permit terrestrial use of the 12.2-12.7 GHz band for the retransmission of local television and the provision of one-way data services on a secondary basis by Direct Broadcast Satellite ("DBS") service operators and their affiliates. These proposals correspond to petitions for rulemakings filed by SkyBridge, L.L.C. ("SkyBridge") and Northpoint Technology ("Northpoint"), respectively. Absent appropriate technical constraints on the proposed NGSO services, beyond those already proposed by the Commission, the proposed allocation would compromise and could significantly interfere with existing DBS and FSS services in the Ku-band, and accordingly, should not be approved at this time. Furthermore, the Commission should not allocate the DBS spectrum to a ubiquitous terrestrial service.

The 12.2-12.7 and 17.3-17.8 GHz bands are allocated domestically and in Region 2 to the Broadcasting Satellite Service ("BSS") for the provision of DBS services and their associated feederlinks, such as those provided by EchoStar. The 11.7-12.2 and 14.0-14.5 GHz bands are also allocated to the FSS, for which EchoStar also holds licenses. The importance of these services cannot be underestimated. In particular, with over six million subscribers in the United States today using the DBS bands, as the Commission recognizes, DBS is the closest competitor to cable television for the provision of multichannel video program distribution services. Accordingly, it is vital that the Commission protect both the current and future operation of these services. However, neither of the proposals made in this proceeding provide

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EXHIBIT N

Federal Communications Commission, Sixth Annual Report, *In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC CS Docket No. 99-230, 15 FCC Rcd. 978 (rel. January 14, 2000), available on Westlaw (2000 WL 347568) and Lexis (2000 FCC LEXIS 250).

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FOR PUBLIC INSPECTION

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In the Matter of Annual Assessment of the Status of
Competition in Markets for the Delivery of Video Programming

CS Docket No. 99-230

FEDERAL COMMUNICATIONS COMMISSION

15 FCC Rcd 978; 2000 FCC LEXIS 250; 19 Comm. Reg. (P & F)
456

RELEASE-NUMBER: FCC 99-418

January 14, 2000 Released; Adopted December 30, 1999

ACTION: [-1] SIXTH ANNUAL REPORT

JUDGES:

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a
statement; and Commissioner Tristani issuing a statement

OPINION:

I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended
("Communications Act"), requires the Commission to report annually to Congress
on the status of competition in markets for the delivery of video programming.
n1 Congress imposed this annual reporting requirement in the Cable Television
Consumer Protection and Competition Act of 1992 ("1992 Cable Act") n2 as a means
of obtaining information on the competitive status of markets for the delivery
of video programming. n3 This is the Commission's sixth annual report ("1999
Report") submitted pursuant to Section 628(g) of the Communications Act. n4

A. Scope of this Report

n1 Communications Act of 1934, as amended, § 628(g), 47 U.S.C. § 548(g).

n2 Pub.L. No. 102-385, 106 Stat. 1460 (1992).

n3 The 1992 Act imposed a regulatory scheme on the cable industry designed to
serve as a transitional mechanism until competition develops and consumers have
adequate multichannel video programming alternatives. One of the purposes of
Title VI of the Communications Act, Cable Communications, is to "promote
competition in cable communications and minimize unnecessary regulation that
would impose an undue economic burden on cable systems." 447 U.S.C. § 521(6).
[*2]

n4 The Commission's previous reports appear at: Implementation of Section 19 FCC000000470
of the 1992 Cable Act (Annual Assessment of the Status of Competition in the
Market for the Delivery of Video Programming), CS Docket No. 94-48, First Report
("1994 Report"), 9 FCC Rcd 7442 (1994); Annual Assessment of the Status of

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Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, Second Annual Report ("1995 Report"), 11 FCC Rcd 2060 (1996); Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133, Third Annual Report ("1996 Report"), 12 FCC Rcd 4358 (1997); Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 97-141, Fourth Annual Report ("1997 Report"), 13 FCC Rcd 1034 (1998); and Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 98-102, Fifth Annual Report ("1998 Report"), 13 FCC Rcd 24284 (1998).

2. In this 1999 Report, we update the information [*3] in our previous reports and provide data and information that summarizes the status of competition in markets for the delivery of video programming. The information and analysis provided in this report are based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a Notice of Inquiry ("Notice") in this docket. n5 To the extent that information provided in previous annual reports is still relevant, we do not repeat that information in this report other than in an abbreviated fashion, and provide references to the discussions in prior reports.

n5 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 99-230, Notice of Inquiry ("Notice"), 14 FCC Rcd 9617 (1999). Appendix A provides a list of commenters.

3. In Section II, we examine the cable television industry, existing multichannel video programming distributors ("MVPDs") and other program distribution technologies and potential competitors to cable television. Among the MVPD systems or techniques discussed are direct broadcast satellite ("DBS") [*4] services and home satellite dishes ("HSDs"), wireless cable systems using frequencies in the multichannel multipoint distribution service ("MMDS") and the instructional television fixed service ("ITFS"), private cable or satellite master antenna television ("SMATV") systems as well as broadcast television service. We also consider other existing and potential distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers ("LECs"), and electric and gas utilities. We include these services and providers because they offer, or may offer, video programming or video programming in conjunction with nonvideo services.

4. In Section III of this report, we examine market structure and competition. We evaluate horizontal concentration in the multichannel video marketplace and vertical integration between cable television systems and programming services. We also discuss competitors serving multiple dwelling unit ("MDU") buildings. We further address programming issues and technical advances. In Section IV, we examine a limited number of cases where consumers have a choice between an incumbent cable operator and another [*5] MVPD in a specific market and report on the effects of this entry.

B. Summary of Findings

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5. In the 1999 Report, we examine the status of competition in markets for the delivery of video programming, discuss changes that have occurred in the competitive environment over the last year, and describe barriers to competition that continue to exist. Overall, the Report finds that competitive alternatives and consumer choices continue to develop. Cable television still is the dominant



technology for delivery of video programming to consumers in the MVPD marketplace, although its market share continues to decline. As of June 1999, 82% of all MVPD subscribers received their video programming from a local franchised cable operator, compared to 85% a year earlier.

6. The total number of subscribers to both cable and noncable MVPDs continues to increase. A total of 80.9 million households subscribed to multichannel video programming services as of June 1999, up 5.5% over the 76.6 million households subscribing to MVPDs in June 1998. This subscriber growth accompanied a 3.2 percentage point increase in multichannel video programming distributors' penetration of television households [*6] to 81.4% as of June 1999.

7. Since the 1998 Report, the number of cable subscribers continued to grow, reaching 66.7 million as of June 1999, up almost 2% over the 65.4 million cable subscribers in June 1998. The total number of noncable MVPD households grew from 11.2 million as of June 1998 to 14.2 million homes as of June 1999, an increase of 26%.

8. Much of the increase in the growth of noncable MVPD subscribers is attributable to the growth of DBS. DBS appears to attract former cable subscribers and consumers not previously subscribing to an MVPD. Between June 1998 and June 1999, the number of DBS subscribers grew from 7.2 million households to 10.1 million households. DBS subscribers now represent 12.5% of all MVPD subscribers. There also have been a number of additional cable overbuilds in the last year. While the Commission has certified new open video systems, some OVS operators have converted portions of their systems to franchised cable operations. Over the last year, the number of subscribers to and market shares of HSD and MMDS subscribers continued to decline. However, the number of SMATV subscribers has increased this year, reversing a decline exhibited the previous [*7] year.

9. During the period under review, cable rates rose faster than inflation, although the difference between the cable price index and the Consumer Price Index ("CPI") is not as great as in the previous year. According to the Bureau of Labor Statistics, between June 1998 and June 1999, cable prices rose 3.8% compared to a 2% increase in the CPI, which measures general price changes. Concurrently with these rate increases, capital expenditures for the upgrading of cable facilities increased (up 13.2% over 1998), the number of video and nonvideo services offered increased, and programming costs increased (license fees increased by 14.6% and programming expenses increased by 16.3%). In addition, the increase in labor costs in the communications industry is reported to exceed the increase in labor costs for all industries combined by almost 2%. We note that during this period, on March 31, 1999, rates for cable programming service tiers ("CPSTs") were deregulated by Congress. n6 We also note that cable operators' pricing decisions may be affected where direct competition exists. Available evidence indicates that when an incumbent cable operator faces head-to-head competition, it responds [*8] in a variety of ways, including lowering prices or adding channels without changing the monthly rate, as well as improving customer service and adding new services such as interactive programming.

n6 See Sections 623(c)(3) and (c)(4); 47 U.S.C § 543(c)(3) and (c)(4).

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10. The Telecommunications Act of 1996 ("1996 Act") n7 removed barriers to



together with our discussion of high-powered Ku-band DBS providers. See 1998 Report 13 FCC Rcd at 24323 P61.

n256 This service is now called "PrimeStar by DirectTV." DirectTV has converted 20,000 PrimeStar customers to its high powered service and has an ongoing marketing plan to transition the remaining medium powered satellite service subscribers to DirectTV. See <http://www.primestar.com>.

70. Subscribership. DBS remains cable's largest competitor, and DBS subscribership shows continued growth. As of June 1999, DBS providers had over ten million subscribers, an increase of approximately 39% since 1998. n257 Between June 1998 and June 1999, DirectTV added 1,524,000 subscribers and EchoStar added 1,234,000 subscribers. n258 DirectTV is the [*86] nation's leading satellite television service with more than 7.6 million customers as of June 1999, and a 72% share of the domestic DBS market. n259 EchoStar had almost 2.6 million subscribers and 28% DBS market share as of June 1999. n260 Analysts estimate that DBS will have nearly 21 million subscribers by 2007. n261 There is some overlap, however, between cable and DBS subscribership. Of the 60% of DBS subscribers with access to cable, 24% subscribe to cable in addition to DBS, primarily to receive local broadcast signals. n262

n257 SBCA Comments at 7.

n258 <http://www.skyreport.com>.

n259 This includes approximately two million PrimeStar by DirectTV subscribers.

n260 Carmel Group, *Cable versus Satellite: Where's the Beef?*, DBS Investor, Sept. 1999, at 4.

n261 21 million by 2007?, SkyREPORT, July 1999, at 11.

n262 SBCA Comments at Appendix B ("1999 DBS Study 6").

71. DBS versus Cable. Differences between cable and DBS continue to diminish, and some observers assert that consumers perceive DBS and cable to be substitutable services. n263 Both DBS and cable operators offer video programming packages to subscribers for a monthly fee, and offer premium [*87] and pay-per-view services. However, DBS subscribers continue to report higher levels of customer satisfaction over cable. For example, SBCA cites a DBS study that found "consumers who select DTH service find it superior to any other video service ... and for DBS subscribers, 90 percent rated the overall quality of their satellite system as excellent or good." n264 J.D. Power and Associates rated EchoStar's DISH Network number one in customer satisfaction in the pay television industry in their 1999 Cable, Satellite TV Customer Satisfaction Study. n265

n263 AT&T Comments at 2. NCTA Comments at 16.

n264 SBCA Comments at 12.

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n265 J.D. Power and Associates, *EchoStar DISH Network Rated Number One*, (press release) September 1999.



15 FCC Rcd 978; 2000 FCC LEXIS 250, *104;
19 Comm. Reg. (P & F) 456

two-way services, such as high-speed Internet access and telephony, possible.

n318 *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd at 9589, 9593 P7 (1995); 1996 Report, 12 FCC Rcd at 4386 P51 n.152.

86. The MMDS industry currently provides competition to the cable industry only in limited areas. For example, BellSouth provides competitive digital MMDS video services in areas in the southeast and GTE provides competitive digital MMDS services in Honolulu. Sprint Corporation and MCI WorldCom, Inc. have acquired most of the larger MMDS operators over the past year, with the intent of using the acquired frequencies to provide two-way communication services. Since [*109] the 33-channel analog capacity of MMDS systems is generally not competitive with that of most cable systems, MMDS subscribership has declined. One analyst believes that analog MMDS video will eventually serve only rural areas, but that digital video subscribership will climb moderately and high-speed data access through MMDS will grow rapidly. n319

n319 Paul Kagan Assocs., *Wireless/Private Cable Investor*, July 13, 1999, at 1-2.

87. *MMDS Households and Subscribership*. In 1999, the number of homes with a serviceable line of sight to an MMDS operator's transmission facilities was 62,500,000, and the number of homes actually capable of receiving an MMDS operator's signal ("homes seen") was 35,750,000. n320 The total number of MMDS video subscribers fell from 1.0 million to 821,000 between June 1998 and June 1999, a decrease of 17.9%. Of the 821,000 subscribers in 1999, 721,000 were analog MMDS subscribers and the other 100,000 were subscribers to digital MMDS services. n321

n320 Paul Kagan Assocs., Inc., *Wireless Cable Sub Count and Revenue Projections, 1998-2009*, *Wireless/Private Cable Investor*, July 13, 1999, at 4-5. The number of homes with a "serviceable line of sight" counts all homes which an MMDS operator is licensed to serve within a particular license area, regardless of technical limitations such as signal strength or blockage by terrain. The number of "homes seen," on the other hand, is the number of homes that MMDS operators have the technical ability to serve. For more discussion, see 1997 Report, 13 FCC Rcd at 1081 P74, fn. 272. [*110]

n321 Paul Kagan Assocs., Inc., *Wireless Cable Sub Count and Revenue Projections, 1998-2009*, *Wireless/Private Cable Investor*, July 13, 1999, at 4-5..

88. *Video Joint Ventures*. Two MMDS operators, Nucentrix Spectrum Resources, Inc. ("Nucentrix"), formerly Heartland Wireless Communications, Inc., and Wireless One, Inc., have announced joint ventures with DBS operator DirectTV. According to these agreements, the MMDS operator will combine its MMDS frequencies with DirectTV's satellite video programming so that consumers can receive local broadcast and other channels with MMDS frequencies in addition to DirectTV's full video service through a DBS dish. The local MMDS operator handles installation of and subscription to both services. This service is offered to both single-family homes and MDUs. n322 Many MMDS operators view MDUs as

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15 FCC Rcd 978; 2000 FCC LEXIS 250, *...;
19 Comm. Reg. (P & F) 456

n343 1996 Act sec. 301(a)(2), 47 U.S.C. § 522(7). Prior to the 1996 Act, to qualify for this exception the buildings had to be under common ownership, control, or management. 1997 Report, 13 FCC Rcd at 1085 P82, fn 297. [*118]

93. On July 13, 1999, the Commission adopted a Notice of Proposed Rulemaking seeking comment on a proposal to allow SMATV operators to use Cable Television Relay Service ("CARS") 12 GHz band channels to deliver video programming. n344 The proceeding was initiated in response to a petition filed by OpTel, a SMATV operator, on April 1, 1998. While OpTel sought such authorizations only for SMATV systems, the Commission broadened the proceeding to potentially include all MVPDs as potential CARS licensees. n345 The Commission also sought comment on whether the CARS band should be expanded to include the frequency band segment from 13.20-13.25 GHz, currently designated for television broadcast auxiliary service. n346

n344 Petition for Rulemaking To Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service, CS Docket No. 99-250, Notice of Proposed Rulemaking, FCC 99-166 (rel. July 14, 1999).

n345 Id. at P4.

n346 Id. at P8.

94. *SMATV Operators*. SMATV operators, also known as private cable operators, consist of hundreds of private and public, small and medium size firms throughout the nation. n347 Among the largest SMATV operators [*119] as of June 1999, were OpTel, Cable Plus, MidAtlantic Communications, and OnePoint Communications Corp. n348 These relatively large SMATV operators serve between 45,000 and 216,249 subscribers each. n349 Many SMATV operators serve approximately 3,000-4,000 customers. n350

n347 1997 Report, 13 FCC Rcd at 1085 P84; 1998 Report, 13 FCC Rcd at 24341 P90.

n348 *Who's Who in Private Cable, Private Cable & Wireless Cable*, Dec. 1998, at 18; facsimile from Independent Cable Television Association ("ICTA"), Oct. 13, 1999, at 2. On October 28, 1999, OpTel, Inc., voluntarily sought protection under Chapter 11 of the U.S. Bankruptcy Code.

n349 *Who's Who in Private Cable, Private Cable & Wireless Cable*, Dec. 1998, at 18; facsimile from ICTA, Oct. 13, 1999, at 2.

n350 Facsimile from ICTA, Oct. 13, 1999, at 2.

95. *Growth*. As of December 1997, there were approximately 24.9 million year-round occupied "households" (individual dwelling units) located in MDU housing in the United States, comprising approximately 25% of the estimated 99.5 million total year-round occupied housing units nationwide. n351 Because SMATV systems generally serve MDUs, and since a portion [*120] of MDUs are currently governed by "perpetual" or long-term exclusive contracts with franchised cable operators, SMATV operators' potential residential subscriber base is likely somewhat less than 25% of all households nationwide. n352 Last year, we reported that there were 940,000 residential SMATV subscribers, as of June 1998. n353 This year, the same source estimates that there were

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15 FCC Rcd 978; 2000 FCC LEXIS 250, 1999;
19 Comm. Reg. (P & F) 456

approximately 1.5 million SMATV subscribers as of June 1999. n354

n351 U.S. Census Bureau, *American Housing Survey for the United States in 1997*, Table 1A-1: "Introductory Characteristics-All Housing Units," Oct. 1999.

n352 Facsimile from ICTA, Oct. 13, 1999, at 2. "Perpetual" contracts generally provide that they run for the term of a franchise "and any extensions thereof."

n353 1998 Report, 13 FCC Rcd at 24341 P90.

n354 NCTA Comments at 5. Last year, NCTA estimated that there were 940,000 residential SMATV subscribers as of June 1998. See App. C, Tbl. C-1. See also, 1998 Report, 13 FCC at 24341 P90. The increase in the number of estimated SMATV subscribers over last year may be attributable to the inexact method used for estimating SMATV subscribers.

96. *Advanced [*121] and Other Service Offerings.* Over the past several years, private cable operators offering service over SMATV systems have begun to offer many of the same services offered by franchised cable operators, including local and long distance residential telephone service and Internet access. n355 In previous years, we reported that SMATV providers offer other unique services such as closed-circuit security monitoring, voice mail, paging, and touch-screen monitor kiosk customer service. n356 Video services generate the most revenue for SMATV operators, followed by Internet access service, pay-per-view service, security services, and telephony. n357 OpTel, the nation's largest SMATV provider, offers bundled voice, video and data services to MDU residents in 13 markets. n358 OnePoint Communications Corp., a leading SMATV operator and licensed competitive local exchange carrier ("CLEC"), offers telephony and Internet access. n359

n355 OpTel Comments at 3; 1997 Report, 13 FCC Rcd at 1085 P84; 1998 Report, 13 FCC Rcd at 24342 P92.

n356 1998 Report, 13 FCC Rcd at 24342 P92.

n357 *Private Cable Industry Facts*, *Private Cable & Wireless Cable*, Dec. 1998, at 4. [*122]

n358 *Who's Who in Private Cable*, *Private Cable & Wireless Cable*, Dec. 1998, at 18.

n359 *Id.*

97. SMATV operators continue to upgrade their systems in order to increase channel capacity and service offerings. n360 According to one source, average channel capacity among those responding to a recent poll was approximately 89 channels, with a low of 50 channels and a high of 200 channels offered. n361

n360 1998 Report, 13 FCC Rcd at 24342 P91.

n361 Facsimile from ICTA, Oct. 13, 1999, at 2. Nineteen SMATV operators responded to ICTA's request for SMATV system information.

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15 FCC Rcd 978; 2000 FCC LEXIS 250, 11;
19 Comm. Reg. (P & F) 456

TiVo Train, Broadcasting & Cable, September 13, 1999, at 38; CableFAX Daily, September 9, 1999, at 2; Circuit City advertising supplement to the Washington Post, November 7, 1999.

n458 <http://www.tivo.com>; <http://www.replaytv.com>.

n459 <http://www.tivo.com>.

n460 <http://www.replaytv.com>; John Markoff, 2 Makers Plan Introductions of Digital VCR, New York Times, March 29, 1999, at C13.

n461 TiVo S-1/A.

120. The 1996 Act amended section 651 of the Communications Act in order to permit telephone companies to provide video services in their telephone service areas. According to the statute, common carriers may: (1) provide video programming to subscribers through radio communications under Title III of the Communications Act; n462 (2) provide transmission of video programming on a common carrier basis under Title II of the Communications Act; n463 (3) provide video programming as a cable system under Title VI of the Communications Act; n464 or (4) provide video programming by means of an open video system ("OVS"). n465

n462 47 U.S.C. § 571(a)(1). [*152]

n463 47 U.S.C. § 571(a)(2).

n464 47 U.S.C. § 571(a)(3).

n465 47 U.S.C. § 571(a)(3)-(4).

121. In previous Reports, we noted that while LECs were not yet a national competitor in the MVPD market, their competitive presence was growing. n466 Currently, it appears that the rate of entry may be slowing by even the most aggressive LECs, and several LECs have reduced or eliminated their MVPD efforts. The decline in the rate of entry of LECs into the MVPD market may indicate that some LECs have already entered the geographic markets they consider most profitable, and are now only filling gaps in areas of service.

1. Current and Planned LEC Video Delivery

n466 1995 Report, 11 FCC Rcd at 2110 P103; 1996 Report, 12 FCC Rcd at 4394 P67; 1997 Report, 13 FCC Rcd at 1099 P108; 1998 Report, 13 FCC Rcd at 24353 P111.

122. MMDS. BellSouth remains the largest LEC investor in MMDS licenses and systems. n467 Since the 1998 Report, however, BellSouth has not launched digital MMDS services in any additional localities. n468 BellSouth's MMDS [*153] service areas cover approximately 3.5 million homes in Florida, Atlanta, Louisiana, and Kentucky. n469 As of the third quarter of 1999, BellSouth had 130,000 MMDS subscribers. n470 In addition, GTE operates a digital MMDS system in Oahu, Hawaii. n471

n467 1998 Report, 13 FCC Rcd at 24354 P112.

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Exhibit N



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Exhibit O

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EXHIBIT O

DISH Network, *Programming Overview*, available on the DISH Network web site
<http://www.dishnetwork.com/software/third_level_content/overview/index.asp>.

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Programming

COMPLETE Overview

Select a destination....

What's Hot
Get Started
About Us
Programming
Equipment
Locals
Cust Service
Promotions
DISH Home
Site Search
Shopcart

Basic Packages



Premium Movie Packages

Over 2000 movies to choose from each month!

Four great packages combined into one—all for one great price!

Note: Showtime 3, Showtime Beyond, HBO Comedy, Starz West, and Starz Cinema West require DISH 500



Broadcast Networks and Superstations



Sports Packages & A la Carte

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Pay-Per-View Sports!
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Lineup.



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Exhibit O

International Packages



International A la Carte



Alaska/Hawaii Package



Adult A la Carte



Standard A la Carte

Bloomberg
TELEVISION



Disney

Pay-Per-View (PPV) Movies and Events



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[Web Master](#)

[DISH Home](#)

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Exhibit O

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Exhibit P

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EXHIBIT P

DISH Network, *Basic Package Channel List*, available on the DISH Network web site
<[http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name=America""s%2BTop%2B100%2BCD&view=list](http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name=America)>.

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Programming

BASIC Packages

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Click the channel abbreviation link below for specific channel information. Hit the "Back" button on your browser to return:

CHANNEL # ON SATELLITE...			ABRV	NETWORK
119°	110°	61.5°		
216			AMERV	America's Voice
130			AMC	American Movie Classics
262			ANGEL	Angel One (Sky Angel 100 Ministries)
184			ANIML	Animal Planet
118			A&E	Arts & Entertainment
135			BBC	BBC America
	9403		BYUTV	BYUTV
124			BET	Black Entertainment Television
129			BRAVO	Bravo
210			CSPAN	C-SPAN
212			CSPAN2	C-SPAN2
954			CD05	CD-70s Songbook
969			CD20	CD-Acoustic Crossroads
957			CD08	CD-Adult Alternative
956			CD07	CD-Adult Contemporary
955			CD06	CD-Adult Favorites
974			CD25	CD-Big Band Era
978			CD29	CD-Blues
959			CD10	CD-Classic Rock
971			CD22	CD-Concert Classics
975			CD26	CD-Contemporary Christian
970			CD21	CD-Contemporary Instrumentals
968			CD19	CD-Contemporary Jazz Flavors
951			CD02	CD-Country Classics
952			CD03	CD-Country Currents

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Exhibit P

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http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name= 9/28/00

952			CD03	CD-Country Currents
973			CD24	CD-Easy Instrumentals
966			CD17	CD-EuroStyle
965			CD16	CD-Fiesta Mexicana
958			CD09	CD-Hot Hits
967			CD18	CD-Jazz Traditions
953			CD04	CD-Jukebox Gold
976			CD27	CD-KidTunes
990			CD31	CD-LDS Radio Network
964			CD15	CD-Latin Styles
972			CD23	CD-Light Classical
960			CD11	CD-Modern Rock Alternative
977			CD28	CD-New Age
950			CD01	CD-New Country
962			CD13	CD-Non-Stop Hip Hop
961			CD12	CD-Power Rock
979			CD30	CD-Reggae
963			CD14	CD-Urban Beat
208			CNBC	CNBC
206			CNNFN	CNN Financial/CNN International
200			CNN	Cable News Network
176			TOON	Cartoon Network, The
107			CMDY	Comedy Central
166			CMT	Country Music Television
204			COURT	Court TV
		9413	DELL	DELL
101			DISH1	DISH Info
251			INFO1	DISH Info 1
182			DISC	Discovery Channel, The
189			DHLTH	Discovery Health
172			DISNE	Disney Channel (East)
173			DISNW	Disney Channel (West)
114			E!	E! Entertainment Television
140			ESPN	ESPN
145			ESPNA	ESPN Alternate
143			ESPCL	ESPN Classic
144			ESPN2	ESPN2
146			ESP2A	ESPN2 Alternate
142			ESNWS	ESPNEWS
432			EMP	Empire Sports
261			EWTN	Eternal Word Television Network
137			Fx	F/X
451			ALT1	FOX Alternate 1
452			ALT2	FOX Alternate 2
453			ALT3	FOX Alternate 3
180			FAM	FOX Family Channel
205			FXNWS	FOX News Channel
415			FOXAZ	FOX Sports Arizona
419			FOXBA	FOX Sports Bay Area
421			FOXCH	FOX Sports Chicago
427			FOXCN	FOX Sports Cincinnati
430			FOXO	FOX Sports Detroit
423			FOXFL	FOX Sports Florida
418			FOXMW	FOX Sports Midwest

FCC000000486

Exhibit P

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http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name.. 9/28/00

FOR PUBLIC INSPECTION

435			FOXNE	FOX Sports New England
413			FOXNY	FOX Sports New York
426			FOXNW	FOX Sports Northwest
425			FOXOH	FOX Sports Ohio
428			FOXPT	FOX Sports Pittsburgh
414			FOXRM	FOX Sports Rocky Mountain
420			FOXSS	FOX Sports South
416			FOXSW	FOX Sports Southwest
417			FOXW	FOX Sports West
110			FOOD	Food Network
	9415		FSTV	Free Speech TV
272			GLVSN	Galavision
116			GAME	Game Show Network
		9416	GSN	Good Samaritan Network
	9401		HITN	HITN
202			HNN	Headline News Network
120			HIST	History Channel, The
112			HGTV	Home & Garden Television
222			HSN	Home Shopping Network, The
424			HTS	Home Team Sports
108			LIFE	Lifetime
9410			LJNK	LinkMedia
209			MSNBC	MSNBC
412			MSG	Madison Square Garden
436			MSC	Midwest Sports Channel
160			MTV	Music Television
161			M2	Music Television 2
213			NASA	NASA
168			TNN	Nashville Network, The
434			NESN	New England Sports Network
170			NICK	Nickelodeon / Nick at Nite (East)
171			NICKW	Nickelodeon / Nick at Nite (West)
169			NOGIN	Noggin
9411			NAUHS	Northern Arizona University / University House
181			PAX	PAX TV
	9402		PBS-U	PBS YOU
226			QVC	QVC Shopping Network
	9400		RSRCH	Research Channel
131			RO/IF	Romance Classics / Independent Film Channel
122			SCIFI	Sci-Fi Channel, The
224			SAH	Shop At Home
422			SUN	Sunshine Network
405			TVGAM	TV Games Network
106			TVLND	TV Land
178			TLC	The Learning Channel
174			TDISN	Toon Disney
220			TRAV	Travel Channel, The
260			TBN	Trinity Broadcasting Network
230			TBS	Turner Broadcast System
132			TCM	Turner Classic Movies
138			TNT	Turner Network Television
	437		TUSOU	Turner South
105			USA	USA Network
9412			UCTV	University of California

FCC000000487

Exhibit P

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http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name.. 9/28/00

270			UNVSN	Univision
162			VH1	VH1
228			VALUE	ValueVision
239			WGN	WGN
214			TWC	Weather Channel, The
191			TECH	Ziff-Davis TV

[Site Search](#) [Web Master](#) [DISH Home](#)

FCC000000488

Exhibit P

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http://www.dishnetwork.com/software/third_level_content/top_100/index.asp?package_name.. 9/28/00

FOR PUBLIC INSPECTION

Exhibit Q

FCC000000489

FOR PUBLIC INSPECTION

EXHIBIT Q

DISH Network Advertisement, USA TODAY, March 16, 2000, at 14A.

FCC000000490

Exhibit Q

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FOR PUBLIC INSPECTION

FCC000000492

Exhibit R

FOR PUBLIC INSPECTION

EXHIBIT R

EchoStar Communications Corporation, Form 10-K for the year ended December 31, 1999, available on the SEC web site

<<http://www.sec.gov/Archives/edgar/data/1001082/0001035704-00-000160.txt>>.

FCC000000493

Exhibit R

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FOR PUBLIC INSPECTION

-----BEGIN PRIVACY-ENHANCED MESSAGE-----

Proc-Type: 2001,MIC-CLEAR

Originator-Name: webmaster@www.sec.gov

Originator-Key-Asymmetric:

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MIC-Info: RSA-MD5, RSA,

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<SEC-HEADER>0001035704-00-000160.hdr.sgml : 20000314

ACCESSION NUMBER: 0001035704-00-000160

CONFORMED SUBMISSION TYPE: 10-K

PUBLIC DOCUMENT COUNT: 5

CONFORMED PERIOD OF REPORT: 19991231

FILED AS OF DATE: 20000313

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME:

ECHOSTAR COMMUNICATIONS CORP

CENTRAL INDEX KEY:

0001001082

STANDARD INDUSTRIAL CLASSIFICATION:

CABLE & OTHER PAY TELEVISION

IRS NUMBER:

880336997

STATE OF INCORPORATION:

NV

FISCAL YEAR END:

1231

FILING VALUES:

FORM TYPE: 10-K

SEC ACT:

SEC FILE NUMBER: 000-26176

FILM NUMBER: 567106

BUSINESS ADDRESS:

STREET 1: 5701 SOUTH SANTA FE DRIVE

CITY: LITTLETON

STATE: CO

ZIP: 80120

BUSINESS PHONE: 3037231000

MAIL ADDRESS:

STREET 1: 5701 SOUTH SANTA FE DRIVE

CITY: LITTLETON

STATE: CO

ZIP: 80120

</SEC-HEADER>

<DOCUMENT>

<TYPE>10-K

<SEQUENCE>1

<DESCRIPTION>FORM 10-K FOR FISCAL YEAR END DECEMBER 31, 1999

<TEXT>

<PAGE> 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FCC000000494

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Exhibit R

<http://www.sec.gov/Archives/edgar/data/1001082/0001035704-00-000160.txt>

9/28/00

FOR PUBLIC INSPECTION

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 1999

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission file number: 0-26176

ECHOSTAR COMMUNICATIONS CORPORATION
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction
of incorporation or organization)

88-0336997
(I.R.S. Employer
Identification No.)

5701 S. SANTA FE
LITTLETON, COLORADO
(Address of principal executive offices)

80120
(Zip Code)

Registrant's telephone number, including area code: (303) 723-1000

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act: Class A Common
Stock, \$0.01 par
value 6 3/4 Series
C Cumulative
Convertible
Preferred Stock

Indicate by check mark whether the Registrant (1) has filed all reports required
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during
the preceding 12 months (or for such shorter period that the Registrant was
required to file such reports), and (2) has been subject to such filing
requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405
of Regulation S-K is not contained herein, and will not be contained, to the
best of Registrant's knowledge, in definitive proxy or information statements
incorporated by reference in Part III of this Form 10-K or any amendment to this
Form 10-K. ☐

As of March 7, 2000, the aggregate market value of Class A Common Stock
held by non-affiliates* of the Registrant approximated \$13.4 billion based upon
the closing price of the Class A Common Stock as reported on the Nasdaq National
Market as of the close of business on that date.

As of March 7, 2000, the Registrant's outstanding Common stock
consisted of 114,079,274 shares of Class A Common Stock and 119,217,604 shares
of Class B Common Stock, each \$0.01 par value. FCC000000495

DOCUMENTS INCORPORATED BY REFERENCE

Exhibit R

Page 603

<http://www.sec.gov/Archives/edgar/data/1001082/0001035704-00-000160.txt>

9/28/00

FOR PUBLIC INSPECTION

audio services available today. As of December 31, 1999, approximately 13 million United States households subscribed to direct broadcast satellite and other direct-to-home satellite services. Our DBS system presently includes FCC-allocated DBS licenses, five operational DBS satellites, digital satellite receivers, two digital broadcast operations centers, customer service facilities, and other assets used in our operations. We believe that DISH Network offers programming packages that have a better "price-to-value" relationship than packages currently offered by most other subscription television providers, particularly cable TV operators. We believe there continues to be significant unsatisfied demand for high quality, reasonably priced television programming services.

We started offering subscription television services on the DISH Network in March 1996. As of December 31, 1999, more than 3.4 million households subscribed to DISH Network programming services. During 1999, more than 1.4 million net new households subscribed to our direct broadcast satellite services, an increase of 63% from 1998. Further, in 1999, J.D. Power and Associates ranked us number one in overall customer satisfaction in the pay TV industry and a Consumer Reports customer satisfaction survey rated DISH Network highest in the "Satellite TV Providers" category.

COMPONENTS OF A DBS SYSTEM

In order to provide programming services to DISH Network subscribers, we have entered into agreements with video, audio and data programmers, who deliver their programming content to our digital broadcast operations center in Cheyenne, Wyoming, via commercial satellites, fiber optics or microwave transmissions. We monitor those signals for quality, and can add promotional messages, public service programming or other information. Equipment at our digital broadcast operations center then digitizes, compresses, encrypts and combines the signal with other necessary data, such as conditional access information. We then "uplink" or transmit the signals to one of our DBS satellites where we then broadcast directly to DISH Network subscribers.

2

<PAGE> 5

In order to receive DISH Network programming, a subscriber needs:

- o a satellite antenna, which people sometimes refer to as a "dish," and related components;
- o an integrated receiver/decoder, which people sometimes refer to as a "satellite receiver" or "set-top box"; and
- o a television set.

Set-top boxes communicate with our authorization center through telephone lines to report the purchase of pay-per-view movies and other events.

Conditional Access System. We use conditional access technology to encrypt the programming so only those who pay can receive the programming. We use microchips placed on credit card-sized access cards, or "smart cards" to control access to authorized programming content. We own 50% of NagraStar LLC, a joint venture that provides us with smart cards. NagraStar purchases these smart cards from Nagra Plus SA, a Swiss company that owns the other 50% of NagraStar LLC. These smart cards, which we can update or replace periodically, are a key element in preserving the security of our conditional access system. When a consumer orders a particular channel, we send a message by satellite that instructs the smart card to permit decryption of the programming for viewing by FCC000000496

Exhibit R

<http://www.sec.gov/Archives/edgar/data/1001082/0001035704-00-000160.txt>

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FOR PUBLIC INSPECTION

Exhibit S

FCC000000497

FOR PUBLIC INSPECTION

EXHIBIT S

Star advertisement, produced by EchoStar [ECC0006563].

FCC000000498

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Exhibit S

FOR PUBLIC INSPECTION

**THE BEST TELEVISION HAS TO OFFER DOESN'T
COME FROM CABLE, IT COMES FROM ABOVE.**



America's Top 40 TV channels for just \$19.99* a month.

We'll beam DISH Network™ programming straight from our satellite to your home, delivering a glorious digital-quality signal. Choose from five big value programming packages from as low as \$19.99* a month.

DIGITAL PICTURE - CD-QUALITY SOUND

MULTICHANNEL PREMIUM SERVICES: HBO, CINEMAX, SHOWTIME AND THE MOVIE CHANNEL
PROGRAMMING, EQUIPMENT, INSTALLATION AND SERVICE FROM ONE SOURCE

For subscription information call:

1-800-333-DISH ext. 333



The Best Television Comes on a DISH™

www.dishnetwork.com

DISH Network is a trademark and service mark of Dish Network Corporation. All other service marks and trademarks belong to their respective owners. Channels are representative of the services available. *All prices and packages subject to change without notice. Laws and restrictions may apply. Programming is available for single-family dwellings located in the United States and its territories and possessions. Premium channels are only available to customers in their limited area not served by local network affiliate.

FCC000000499

Exhibit S

Restricted Confidential Pursuant to Protective Order - Outside Counsel Only

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ECC0006563

FOR PUBLIC INSPECTION

Exhibit T

FCC000000500

FOR PUBLIC INSPECTION

EXHIBIT T

Web page from AT&T's Internet site, <<http://www.cable.att.com/cgi-bin/index.fcgi>>. This page is accessible by entering a ZIP code for an area serviced by AT&T digital cable (such as 80210).

Welcome • AT&T in your Community • AT&T Digital Cable



AT&T Makes It Personal.

In addition to providing you the best in home entertainment, we respond to your individual needs — from programming choices to community events to billing questions. So get to know your AT&T Broadband Representative, and start enjoying outstanding entertainment — and superior local service.

Supporting Our Community

AT&T proudly supports Denver area community activities. Our ongoing commitment to sponsoring special events, benefits and outreach



programs keeps us in touch with our neighbors' interests and concerns. Check this space regularly for an update of AT&T-sponsored events in your area.

GO Digital!

AT&T Digital Cable gives you the entertainment you crave — with greater variety, control, and programming choices — right through the cable in your home.



DIGITAL CABLE

No special digital TV, no satellite equipment to buy and install! It couldn't be easier to get great entertainment.

AT&T
home

FOR BUSINESS • FOR HOME • ACCESS.AT&T

ABOUT AT&T • WRITE TO US • HELP/SEARCH

Search AT&T →

FCC000000502

Exhibit T

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Exhibit U

FCC000000503

FOR PUBLIC INSPECTION

EXHIBIT U

Comments of EchoStar Communications Corporation, *In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC CS Docket No. 97-141 (July 23, 1997), available on the FCC web site,

<https://haifoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1878570001> and

<https://haifoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=1878570002>.

FCC000000504

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 23 1997

DOCKET FILE COPY ORIGINAL

In the Matter of

Annual Assessment of the
Status of Competition in
Markets for the Delivery
of Video Programming

CS Docket No. 97-141

**COMMENTS OF ECHOSTAR
COMMUNICATIONS CORPORATION**

David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Communications Corporation
90 Inverness Circle East
Englewood, CO 80112

Philip L. Malet
Pantelis Michalopoulos
Colleen A. Sechrest
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/429-3000

Karen E. Watson
Director Governmental Relations
EchoStar Communications Corporation
1850 M Street, N.W., Suite 1070
Washington, D.C. 20036

Its Attorneys

July 23, 1997

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No. of Copies rec'd
List ABCDE

028

Exhibit U

FCC000000505

FOR PUBLIC INSPECTION

resource for introduction of viable competition against cable operators; and expand cable operators' affiliation with programming services to include News Corp.'s programming and sports rights empire.

EchoStar is a Direct Broadcast Satellite ("DBS") provider with two operational satellites at the 119° W.L. orbital location and close to 600,000 subscribers. EchoStar is virtually the only DBS provider pursuing a pure strategy of head-on, direct competition against cable. However, while DBS service remains the most likely alternative with the realistic potential of eroding the cable operators' dominance, EchoStar has been hampered in its efforts to realize that potential.

I. CABLE OPERATORS POSSESS MARKET POWER IN THE MVPD MARKET

A. EchoStar's Competitive Efforts

Ever since it commenced DBS service in the spring of 1996, EchoStar has viewed cable subscribers as its primary target market. Accordingly, EchoStar has priced and structured its offering with the primary purpose of attracting cable subscribers. *First*, EchoStar broke new ground among DBS providers in March 1996 by substantially reducing the upfront cost of the dish to the subscriber from \$499 to \$199. On June 1, 1997, EchoStar moved DBS pricing one step closer to the cable paradigm by eliminating the requirement that new subscribers purchase a prepaid one-year subscription.

Second, EchoStar has priced its packages at monthly rates well below comparable cable offerings. Thus, EchoStar offers its America's Top 40SM package at \$19.99 per

month, as compared to over \$30 for comparable cable service. *Third*, EchoStar has offered discounts to cable subscribers, available upon presenting a cable invoice.

As a result of its intense promotional efforts, aggressive pricing and consistent high quality of its DISH offering, EchoStar has been able to increase its subscriber base to about 582,000 as of June 30, 1997 and over 600,000 currently. Moreover, EchoStar believes that about 60% of its subscribers have switched to EchoStar from cable systems.

Nevertheless, EchoStar's subscribers base remains negligible compared to the 65 million cable households.¹ Furthermore, as discussed below, EchoStar's offering has not resulted in downward pressure on cable rates, which are indeed on the rise.

B. EchoStar's Constraints

In attempting to compete against the entrenched multi-channel providers, EchoStar is hampered by several constraints. *First*, unlike cable operators, EchoStar does not at present offer local programming. The Commission has recognized that the inability to offer local signals places DBS at a competitive disadvantage to other MVPDs.² Indeed, cable operators have seized on this significant and well-publicized handicap in their advertising campaigns against satellite programming distributors. EchoStar plans to start offering local network signals in the areas where these signals originate upon the launch of its third satellite, scheduled for September 1996. That satellite, however, will operate from a partial-CONUS location -- 61.5° W.L. Moreover, EchoStar's current satellites have no spot beam capacity, meaning that

¹ Paul Farhi, "Biggest Cable Operator To Raise Rates 7% in '97," The Washington Post (Mar. 14, 1997).

² See 1996 Cable Competition Report at ¶¶ 38, 43.

Exhibit V

FCC000000508

FOR PUBLIC INSPECTION

EXHIBIT V

Comments of the United States Department of Justice, *In re Application of MCI Telecommunications Corporation and EchoStar 110 Corporation*, FCC File No. SAT-ASG-19981202-00093 (January 14, 1999).

United States



of America

Department of Justice

July 7, 2000

I hereby certify that the annexed paper is a true copy of the original record which is in the official custody of the Department of Justice, to wit: 1/14/99 -

Comments of the United States Department of Justice - Antitrust Division to the Federal Communications Commission - In the Matter of the Application of MCI Telecommunications Corporation and EchoStar 110 Corporation.

In witness whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

Ann LeHarding

ANN LEA HARDING
Chief, FOIA/PA
Antitrust Division
325 7th Street, N.W.
Washington, D.C. 20530

Exhibit V

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Form DOJ-14
OCT 1977

FCC000000510

FOR PUBLIC INSPECTION

Download the WP 5.1 version

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of)
MCI TELECOMMUNICATIONS) File No. SAT-ASG-19981202-00093
CORPORATION and ECHOSTAR 110)
CORPORATION)

A. Douglas Melamed
Principal Deputy Assistant Attorney General
Antitrust Division

Donald J. Russell
James R. Wade
Andrew S. Cowan

Donna E. Patterson
Deputy Assistant Attorney General
Antitrust Division

Telecommunications Task Force

Antitrust Division
U.S. Department of Justice
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530
(202) 514-5621

January 14, 1999

**COMMENTS OF THE
UNITED STATES DEPARTMENT OF JUSTICE**

MCI Telecommunications Corporation has requested approval to transfer its license to operate 28 channels at the 110 West Longitude DBS slot to EchoStar Communications Corporation. This proposed transaction does not pose any significant risk to competition in the distribution of multichannel video programming. Rather, the transaction will greatly increase EchoStar's capacity to transmit video programming and, in so doing, will enhance its ability to compete aggressively and effectively against other distributors of multichannel video programming, including the cable companies that dominate these distribution markets. Prompt approval of this application by the Commission will provide important competitive benefits to the millions of households that purchase multichannel video programming services.

FCC000000511

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Exhibit V

<http://www.usdoj.gov/atr/public/comments/2173.htm>

06/19/2000

FOR PUBLIC INSPECTION

small share of the overall MVPD market. When examined in the context of the relevant product market, and taking into account the structure and characteristics of that market, it is clear that EchoStar's application presents no significant competitive concerns. Rather, approval of EchoStar's request promises to facilitate new and potentially significant competition between DBS and cable providers, thereby benefitting consumers of MVPD services.

A. The relevant market is the provision of MVPD services.

The relevant product market in which to analyze this transaction is the distribution of multiple channels of video programming directly to the home. The programming can be delivered by various methods, including cable, satellite and wireless technologies. The Commission has consistently taken the view that MVPD is the proper product market for evaluating competitive issues relating to cable television and DBS.⁴ DOJ's extensive

Page 4

investigation in connection with the Primestar litigation uncovered considerable evidence to validate this market definition.

Under the DOJ Horizontal Merger Guidelines, on which the Commission has relied in the

past,⁵ cable and DBS are considered to be in the same product market if they are close substitutes

for one another, such that consumers would switch from one to the other in response to a price

increase in either.⁶ The DOJ's investigation of the distribution of multichannel video programming indicates that consumers view DBS and cable as similar and to a large degree substitutable.

First, both cable and DBS technologies provide essentially the same service to customers:

- (1) the delivery of multiple channels of video, typically anywhere between 35 and 175;
- (2) programming that includes a mixture of "basic" services (such as ESPN, CNN, USA and TNT),

as well as premium services (such as HBO, Showtime and Cinemax) that are not available "over-

the-air"; in exchange for (3) a monthly subscription fee. One initial point of differentiation between the two services, the large initial cost of DBS equipment, has been all but eliminated as

DBS firms, led by EchoStar, have attracted consumers by offering deeply discounted receiving equipment and installation rates.

Second, DOJ found extensive evidence of customer switching from cable to DBS. More and more new DBS subscribers in recent years are former cable subscribers who either stopped buying cable or downgraded their cable service once they purchased a DBS system. This trend

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Exhibit V

FCC000000512

Exhibit W

FCC000000514

FOR PUBLIC INSPECTION

EXHIBIT W

Federal Communications Commission, First Report, *In re Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC CS Docket No. 94-48, 9 FCC Rcd. 7442 (rel. September 28, 1994), available on Westlaw (1994 WL 528274) and Lexis (1994 FCC LEXIS 5322).

LEXSEE 9 fcc rcd 7442

In the Matter of Implementation of Section 19 of the Cable
Television Consumer Protection and Competition Act of 1992
Annual Assessment of the Status of Competition in the Market
for the Delivery of Video Programming

CS Docket No. 94-48

FEDERAL COMMUNICATIONS COMMISSION

9 FCC Rcd 7442; 1994 FCC LEXIS 5322; 75 Rad. Reg. 2d (P & F)
1415

RELEASE-NUMBER:
FCC 94-235

September 28, 1994 Released; Adopted September 19, 1994

ACTION: [**1]

FIRST REPORT

JUDGES:

By the Commission

OPINION:

[*7445] I.

INTRODUCTION

1. Pursuant to the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or "the Act"), n1 the Commission is required to report to Congress annually "on the status of competition in the market for the delivery of video programming." n2 This report (the "Report" or the "Competition Report") is the first of these annual competition studies. n3

n1 Pub. L. No. 102-385, 106 Stat. 1460 (amending the Communications Act of 1934 (the "Communications Act") and codified at 47 U.S.C. § 151, et seq.).

n2 Communications Act § 628(g), 47 U.S.C. § 548(g) (requiring the Commission to report to Congress "beginning not later than 18 months after promulgation of the regulations required by [Section 19(c) of the 1992 Cable Act]"). Those regulations were adopted on April 1, 1993. Implementation of Sections 12 & 19 of the 1992 Cable Act -- Dev. of Competition & Diversity in Video Programming Dist. & Carriage, First Report & Order ("Program Access Report & Order"), 8 FCC Rcd 3359 (1993), recon. pending MM Docket No. 92-265. Consequently, the Report is due on October 1, 1994.

n3 The Commission began this study with a notice of inquiry, which it released May 19, 1994. Implementation of Section 19 of the 1992 Cable Act -- Annual Assessment of the Status of Competition in the Market for the Delivery of

FCC000000516

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Exhibit W



LEXIS-NEXIS



LEXIS-NEXIS



LEXIS-NEXIS

JC Rcd 7442, *7467; 1994 FCC LEXIS 53. **39;
75 Rad. Reg. 2d (P & F) 1415

Commission has adopted a two-part test for determining whether consumers are "served" by two MVPDs: each MVPD's service must both be both technically available and actually available to cable subscribers. Implementation of Sections of the 1992 Cable Act -- Rate Regulation, Report & Order Further Notice of Proposed Rulemaking ("1993 Rate Report & Order") P38, 8 FCC Rcd 5631, 5666 (1993). An MVPD's service is considered comparable if it provides at least 12 channels "including at least one channel of nonbroadcast service programming." Id. For purposes of determining when the 15% threshold is reached, the subscriberships of all alternative MVPDs serving at least 50% of the households in the franchise area are aggregated. Id. at 5662-65.

n113 Communications Act § 623(1)(1)(A), 47 U.S.C. § 543(1)(1)(A).

n114 Id. at § 543(1)(1)(C), 47 U.S.C. § 543(1)(1)(C). As of September 16, 1994, a total of 135 claims raising the existence of "effective competition" in certification proceedings before the Commission have been made by cable system operators. Of these, 11 (all of which are pending), are based on the 50/15 standard of the 1992 Cable Act. The other 124 of those "effective competition" claims are based on the 30% penetration standard. A total of 13 of these 124 cases have been resolved (eight have been denied, while five have been dismissed). [**40]

4. Implications of Market Definition for This and Future Reports

49. Product Market. For purposes of this Report, the relevant product market contemplated in the 1992 Act -- multichannel video programming service -- is the appropriate starting point for assessing the status of competition in the market for the delivery of video programming. A primary focus of this Report, and a central concern of the 1992 Cable Act, is the extent to which MVPDs that use alternative technologies are emerging as significant competitors to cable operators. In addition to cable operators (which include direct competitors known as "overbuilders"), MMDS, DBS, and TVRO providers are specifically included within the statutory definition of an MVPD, n115 and the Commission has subsequently determined that VDT and SMATV systems should be considered MVPDs, as well. n116 Consequently, this Report will evaluate the status of providers utilizing each of these technologies.

n115 Communications Act § 602(12), 47 U.S.C. § 522(12).

n116 1993 Rate Report & Order PP21-22, 8 FCC Rcd at 5650-51. The Commission reserved judgment as to whether LMDS systems or digitally-compressed broadcast signals would fit within the statutory definition, and the Commission expressly held that leased access providers offering compressed or multiplexed multichannel video programming were not MVPDs because they used the same facilities as the cable system operator. Id. [**41]

50. In addition, the Commission will discuss other video programming distribution media as potential substitutes for cable services. While the use of current broadcast technology is expressly excluded from the statutory definition of an MVPD (because a broadcast station does not offer "multiple" channels of video programming and is not offered on a subscription basis), the Commission nonetheless includes a discussion of broadcast television in this Report, given broadcasting's potential constraining effect on cable industry conduct. Finally, the Commission discusses in this section other delivery media

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Exhibit X

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EXHIBIT X

Federal Communications Commission, Fifth Annual Report, *In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC CS Docket No. 98-102, 13 FCC Rcd. 24284 (rel. December 23, 1998), available on Westlaw (1998 WL 892964) and Lexis (1998 FCC LEXIS 6502).

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LEXSEE 13 fcc rcd 24284

In the Matter of Annual Assessment of the Status of
Competition in Markets for the Delivery of Video Programming

CS Docket No. 98-102

FEDERAL COMMUNICATIONS COMMISSION

13 FCC Rcd 24284; 1998 FCC LEXIS 6502; 14 Comm. Reg. (P & F)
923

RELEASE-NUMBER: FCC 98-335

December 23, 1998 Released; Adopted December 17, 1998

ACTION: [**1] FIFTH ANNUAL REPORT

JUDGES:

By the Commission: Chairman Kennard and Commissioners Ness, Powell and
Tristani issuing separate statements; Commissioner Furchtgott-Roth dissenting
and issuing a statement

OPINION:

[*24284] [*24286] I. INTRODUCTION

1. This is the Commission's fifth annual report ("1998 Report") n1 to
Congress submitted pursuant to Section 623(g) of the Communications Act of 1934,
as amended ("Communications Act"). Section 628(g) requires the Commission to
report annually to Congress on the status of competition in markets for the
delivery of video programming. n2 Congress imposed this annual reporting
requirement in the Cable Television Consumer Protection and Competition Act of
1992 ("1992 Cable Act") n3 as a means of obtaining information on the
competitive status of markets for the delivery of video programming. n4

n1 The Commission's first four reports appear at: Implementation of Section
19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the
Market for the Delivery of Video Programming), CS Docket No. 94-48, First Report
("1994 Report"), 9 FCC Rcd 7442 (1994); Annual Assessment of the Status of
Competition in the Market for the Delivery of Video Programming, CS Docket No.
95-61, Second Annual Report ("1995 Report"), 11 FCC Rcd 2060 (1996); Annual
Assessment of the Status of Competition in the Market for the Delivery of Video
Programming, CS Docket No. 96-133, Third Annual Report ("1996 Report"), 12 FCC
Rcd 4358 (1997); and Annual Assessment of the Status of Competition in Markets
for the Delivery of Video Programming, CS Docket No. 97-141, Fourth Annual
Report ("1997 Report"), 13 FCC Rcd 1034 (1998). [**2]

n2 Communications Act of 1934, as amended, § 628(g), 47 U.S.C. § 548(g)
(1996) ("Communications Act").

n3 Pub. L. No. 102-385, 106 Stat. 1460 (1992).

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Exhibit X



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of competition in markets for the delivery of multichannel video programming. 1994 Report, 9 FCC Rcd at 7623, App. H. [**5]

B. Summary of Findings

5. In the 1998 Report, we address the status of competition in markets for the delivery of video programming, discuss how the regulatory changes enacted in the 1996 Act have affected the competitive environment, and describe barriers to competition that continue to exist. The information gathered in this report provides the last comprehensive picture of the state of cable competition prior to March 31, 1999, the date on which the Commission's authority under Section 623(c)(3) to review complaints submitted by local franchising authorities concerning increases in rates for cable programming service ("CPS") tiers sunsets. n8

n8 See Sections 623(c)(3) and (c)(4); 47 U.S.C. § 543(c)(3) and (c)(4).

6. The Report finds that competitive alternatives and consumer choices are still developing. We find that cable television continues to be the primary delivery technology for the distribution of multichannel video programming and continues to occupy a dominant position in the MVPD marketplace. As of June 1998, 85% of all MVPD subscribers received video programming service from local franchised cable operators compared to 87% a year [**6] earlier.

7. There has been an increase in the total number of subscribers to noncable MVPDs. Much of this increase is attributable to the continued growth of DBS, which is attracting former cable subscribers and consumers not previously subscribing to an MVPD. Between June 1997 and June 1998, the DBS grew from approximately 5 million subscribers to 7.2 million subscribers. DBS subscribers now represent 9.40% of all MVPD subscribers compared to 6.85% a year earlier. In addition, new open video systems ("OVS") have launched in a few areas. However, there have been declines in the number of subscribers and market shares of HSD, MMDS, and SMATV over the last year and the one existing LMDS system recently terminated service. There also has been a limited number of additional cable overbuilds in the last year. In communities where the incumbent cable operators face such competition, they respond in [*24288] a variety of ways, including lowering prices, adding channels at the same monthly rate, improving customer service, or adding new services such as interactive programming.

8. A total of 76.6 million households subscribed to multichannel video programming services as of June 1998, up 4.1% over [**7] the 73.6 million households subscribing to MVPDs in June 1997. This subscriber growth accompanied a 2.3 percentage point increase in multichannel video programming distributors' penetration of television households to 73.2% in June 1998. During this period, the number of cable subscribers continued to grow, reaching 65.4 million as of June 1998 up about 2% over the 64.2 million cable subscribers in June 1997. The total number of noncable MVPD subscribers grew from 9.5 million as of June 1997 to 11.2 million as of June 1998, an increase of over 18% since the 1997 Report.

9. During the period under review, cable rates rose more than four times the rate of inflation. According to the Bureau of Labor Statistics, between June 1997 and June 1998, cable prices rose 7.3% compared to a 1.7% increase in the Consumer Price Index ("CPI"), which is used to measure general price changes. A portion of these rate increases is attributable to capital expenditures for the

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Exhibit Y:

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